



Many Voices Working for the Community

Oak Ridge Site Specific Advisory Board

July 8, 1999

Mr. Rod Nelson
U.S. DOE/ORO
P.O. Box 2001, EM 90
Oak Ridge, TN 37831

**RE: Comments on the Record of Decision, D1, for Disposal of Oak Ridge Reservation
CERCLA Waste, Oak Ridge, Tennessee, May 1999 (DOE/OR/01-1791&D1)**

Dear Mr. Nelson:

The Oak Ridge Site Specific Advisory Board (ORSSAB) approved the enclosed comments on the *Record of Decision, D1, for Disposal of Oak Ridge Reservation CERCLA Waste, Oak Ridge, Tennessee* dated May 1999 at our July 7, 1999 Board meeting.

We look forward to your written response to our comments.

Sincerely,

A handwritten signature in black ink that reads "William M. Pardue". The signature is written in a cursive, flowing style.

William M. Pardue, Chair

WMP/sb

Enclosure

cc: Marianne Heiskell, DOE/ORO
Earl Leming, TDEC
Jon Johnston, EPA Region 4



Oak Ridge Site Specific Advisory Board

Comments on the May 1999 D1 Record of Decision for Disposal of Oak Ridge Reservation CERCLA Waste, Oak Ridge, Tennessee

The Oak Ridge Site Specific Advisory Board (ORSSAB) has reviewed the D1 draft Record of Decision (ROD) on the disposal of low level CERCLA waste. It documents the ORO/EM decision to have a disposal facility constructed in east Bear Creek Valley. The Board continues to support the position of the DOE on this decision. Plans have been explained in many public meetings, and as recorded in Part 3 of the document (the public responsiveness section) other groups have expressed their support.

While this D1 iteration of the ROD has incorporated NEPA values and generally responded to public comments and concerns, there remain some outstanding issues that should be resolved in the next iteration of the ROD. Some of our comments, particularly those involving stewardship, seem quite important. While DOE may not easily solve the problem of guaranteed funding for “perpetual care,” there needs to be a very clear commitment to take those actions known to be required.

- The stabilization, regrading, and revegetation of the borrow area (pp. 2-23, 3-5, and 3-9) are given short shrift. Such restoration is difficult at best and although a reference is given for restoration of the West End Borrow Area, we request that this ROD include description and discussion of a restoration plan. If restoration of the existing West End Borrow Area and the additional 12 – 18 acres required for the waste disposal facility depends on topsoil from elsewhere, the impacts on the source of that soil must be considered in the ROD.
- The ROD must clearly state that the waste disposal site will remain within federal jurisdiction. The discussion of deed restrictions on pages 2-24 and 2-89 suggests the possibility of other ownership of the site after facility closure. Please include a complete discussion of deeds and deed restrictions as they relate to contaminated federal property. Also, include discussion of DOE-ORO plans for deed description and filing with the appropriate local government authority. (See comments numbers 3 and 6 below.) This issue is applicable to all of the RODs for contaminated areas on the Reservation and should be thoroughly understood and described in this ROD.
- Relegating details of closure and the long-term S&M program (p. 2-45) to post-ROD documentation is unacceptable. Post-ROD documentation has no legal standing and is not part of the administrative record. Thus, the public may not have access to post-ROD documents and will not know what to expect when on-site waste disposal is completed in either 2011 (low-end scenario) or 2033 (high-end scenario). Addressing this important issue in the Record of Decision to build the Bear Creek Valley Waste Disposal Facility is necessary to gain Board approval.

- Our concern for keeping long-term records of the origin, composition, location, and date of disposal of waste within the facility (see DOE response to SSAB comment 10 on page 3-7 of this ROD) is not adequately addressed in the survey plat and post closure notices sections on pages 2-83 and 2-84. Furthermore, the DOE response to our comment depends on post-closure plans, which we find unsatisfactory (see above).
- The Oak Ridge stakeholders have devoted a lot of time to stewardship for the contaminated areas on the Reservation and the ORO-EM program has supported these efforts. In our comments on the Proposed Plan (see DOE response to SSAB comment 12 on page 3-8 of this ROD) we asked for more discussion and detail of stewardship, institutional and physical controls, and long-term funding for the waste disposal facility. The LOC and the City of Oak Ridge submitted similar requests (pp. 3-10 and 3-12). The ORSSAB finds that description and discussion of long-term stewardship in the D1 ROD is inadequate. We expect the Waste Disposal Facility ROD to contain a more precise discussion of stewardship and long-term post-closure funding for the waste facility.
- The ROD should describe and discuss buffer zone requirements for the waste disposal facility.

We have the following more specific comments:

1. Page 1-5, bullet 3. This statement seems to defer the Waste Acceptance Criteria (WAC) almost entirely. Members of the public showed concern about such a deferral. However, starting with the last 2 paragraphs on page 2-42 and continuing with two more paragraphs on page 44 there is a nice statement of the conceptual criteria that are to underlie the WAC. A hint of the same spirit is needed on page 1-5, including a reference to the more complete statement coming up on 2-42. A quick suggestion would be to copy the sentence at the bottom of 2-42 and the one that follows it for inclusion on page 1-5.
2. Page 1-5, last words. “restrict public access” is too loose. Suggest a performance concept, as for instance “...restrict public access sufficiently to avoid any damage to the protective features of the cell and disabling injury to the intruder...”
3. Page 2-24, paragraph 3, lines 5-10. The concept is fine, but the language needs to be more realistic if it is to have meaning. There is no deed registered for the ORR. There is a registered court decree from the time of the condemnation. Apparently there is no thought of writing any deed unless and until land is transferred. The ROD can promise to register a notice or affidavit stating the cell situation and referring to that decree. Arrangements in the register’s office would assure that a diligent title search would find this notice.

The post-closure care requirements listed on pages 2-83 and 2-84 should be discussed in the ROD, in particular, the survey plat, post-closure plan, and post-closure notices. The “requirements” may need to be adjusted relative to zoning authority and “notation on the deed.” Mr. Al Brooks has discovered that this requirement is not being interpreted in a useful way for other sites on the ORR, probably because the language does not quite fit realities on the ORR.

The DOE can and should also assert that if a deed is written, it will contain the indicated information. However, the County does not enforce deed restrictions and they are not self-enforcing, so the ROD should also indicate that the DOE promises to enforce the restrictions by civil actions, or indicate another enforcement mechanism.

4. Page 2-45, paragraph 3. A general performance criterion is needed, for the “prevent access” portion and the rest. Note that the second sentence is very close to meeting this need, and requires only a definition of “protective.” We assume meeting the present CERCLA risk limit would be protective.
5. Page 2-49, last paragraph. We assume this paragraph applies to times prior to “closure” and should say so since, as the draft ROD points out, the implications of the CERCLA risk range will dominate after closure.
6. Page 2-89, the second action-specific ARAR. As mentioned in comment 6 above, the term “deed restriction” is inoperative without interpretive explanation.

In addition, please make these editorial changes:

1. Page 1-4, line 2. If one says “comprehensive” then indicate that only rather low toxicity wastes are involved.
2. Page 1-4, paragraph 3, line 6. Mention “engineering” as well as “institutional” controls.
3. Page 1-5, bullet 2. Facility is designed.